

TAXATION

Executive Office,

AUSTIN, May 3, 1882.³³

To the Honorable Senate and House of Representatives in Legislature assembled:

I respectfully return to your honorable body the House bill No. 20, entitled "An act to amend articles 4666 and 4668 of the Revised Statutes," without my approval thereof, and with my objections to its passage as a law.

Said bill provides that "the commissioners courts of the several counties of this State shall have power to levy twenty-five cents on the one hundred dollars valuation as taxes, and equal to one-half the maximum State tax authorized by the Constitution of the State." It is unnecessary to quote the other portions of the bill, relating to the occupation taxes, as they do not change the law now in force on that subject.

The evident object of this bill is to give a construction to section 9, article 8, of the Constitution, under the head of "Taxation and Revenue," which reads as follows, to wit: "The State tax on property, exclusive of the tax necessary to pay the public debt, shall never exceed fifty cents on the one hundred dollars valuation, and no county, city or town shall levy more than one-half of said State tax, except for the payment of debts already incurred, and for the erection of public buildings, not to exceed fifty cents on the one hundred dollars in any one year, and except as in this Constitution is otherwise provided."

My objections to the bill are as follows:

1. From the manner in which it is worded it is capable of a literal construction that would authorize the court to impose a tax of twenty-five cents on the one hundred dollars valuation, and, in addition thereto, a tax equal to one-half the maximum State tax authorized by the Constitution.

2. The bill is an act of useless legislation, because it is simply a construction of the meaning of the said ninth section of the Constitution, which construction is not and can not be a judicial determination, binding on the courts. The commissioners court is a tribunal established by the Constitution, with its powers of taxation defined expressly by said ninth section. Its powers on that subject can not be increased or diminished by a declaratory act of the Legislature, which, and which only, would be the effect of this bill.

3. As a construction it is a new departure from the cotemporaneous,

³³*House Journal*, 132.

universal, and well settled construction of said section throughout the State, as exhibited in the uniform action of every commissioners court in the State so far as is known or heard from. Such uniform construction by said commissioners courts is the very highest evidence that the people of the State, who voted on and adopted the Constitution, understood this ninth section to mean exactly what said courts, by their action, have construed it to mean; which is that, with certain exceptions, the county tax could not exceed one-half of the State tax, as said State tax might be fixed by the Legislature within the constitutional limit of fifty cents on the one hundred dollars valuation.

4. Said legislative construction is believed to be erroneous, because, by what I believe to be a proper construction of the wording of said section, the "said State tax," the one-half of which the commissioners court shall never exceed in making a levy of a county tax, refers to the amount of the State tax, as forty cents, thirty cents, or any other amount not exceeding the constitutional limit of fifty cents on the one hundred dollars valuation, and does not refer to the maximum of fifty cents, which may or may not be the "said State tax," as the Legislature may determine. So I believe the highest courts of the State will hold, and ought to hold, whenever the question be presented, which will be very soon after such a construction may be adopted as is contained in this bill. The Supreme Court reports abound with cases showing that almost every doubtful authority under which taxes have been imposed has been promptly contested in the courts.

5. Such a construction of the taxing powers of the commissioners court, if acted on, will cause an immense amount of litigation, cost and trouble, with no corresponding benefit.

6. Such a construction will encourage an extravagance in county government, which rings, too often formed about county seats, foster and make profitable, to the injury and dissatisfaction of the great body of the people of the county.

Such counties as those whose county governments are well and prudently managed, which now constitute a large majority of the whole number of counties in the State, do not now, and will not hereafter need to act upon such a construction. The rest may profit by following their example.

Respectfully submitted,

O. M. ROBERTS, Governor.